

SECOND DIVISION

[G.R. No. 125297, June 06, 2003]

ELVIRA YU OH, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before this Court is a petition for review on *certiorari* of the decision^[1] of the Court of Appeals in CA-G.R. No. CR No. 16390, promulgated on January 30, 1996, affirming the conviction of petitioner Elvira Yu Oh by the Regional Trial Court (RTC), Branch 99, Quezon City and the resolution dated May 30, 1996 which denied her motion for reconsideration.

The facts as borne by the records are as follows:

Petitioner purchased pieces of jewelry from Solid Gold International Traders, Inc., a company engaged in jewelry trading. Due to her failure to pay the purchase price, Solid Gold filed civil cases^[2] against her for specific performance before the Regional Trial Court of Pasig. On September 17, 1990, petitioner and Solid Gold, through its general manager Joaquin Novales III, entered into a compromise agreement to settle said civil cases.^[3] The compromise agreement, as approved by the trial court, provided that petitioner shall issue a total of ninety-nine post-dated checks in the amount of P50,000.00 each, dated every 15th and 30th of the month starting October 1, 1990 and the balance of over P1 million to be paid in lump sum on November 16, 1994 which is also the due date of the 99th and last postdated check. Petitioner issued ten checks at P50,000.00 each, for a total of P500,000.00, drawn against her account at the Equitable Banking Corporation (EBC), Grace Park, Caloocan City Branch. Novales then deposited each of the ten checks on their respective due dates with the Far East Bank and Trust Company (FEBTC). However, said checks were dishonored by EBC for the reason "Account Closed." Dishonor slips were issued for each check that was returned to Novales.^[4]

On October 5, 1992, Novales filed ten separate Informations, docketed as Criminal Cases Nos. 92-26243 to 92-36252 before the RTC of Quezon City charging petitioner with violation of Batas Pambansa Bilang 22, otherwise known as the Bouncing Checks Law.^[5] Except for the dates and the check numbers, the Informations uniformly allege:

That on or about the ... in Quezon City, Philippines, the said accused did then and there willfully, unlawfully and feloniously make or draw and issue to JOAQUIN P. LOVALES III to apply on account or for value Equitable Banking Corp. Grace Park Caloocan Branch Check No. ... dated ... payable to SOLID GOLD INTERNATIONAL TRADERS, INC. in the

amount of P50,000.00, Philippine Currency, said accused well knowing that at the time of issue she/he/they did not have sufficient funds in or credit with the drawee bank for payment of such check in full upon its presentment, which check when presented for payment was subsequently dishonored by the drawee bank for insufficiency of funds/Account Closed and despite receipt of notice of such dishonor, said accused failed to pay said SOLID GOLD INTERNATIONAL TRADERS, INC. the amount of said check or to make arrangement for full payment of the same within five (5) banking days after receiving said notice.

CONTRARY TO LAW.^[6]

The cases were consolidated and subsequently raffled to Branch 99 of the said RTC. Upon arraignment, accused pleaded not guilty.^[7] Trial then ensued. On December 22, 1993, the RTC rendered its decision, the dispositive portion of which reads:

WHEREFORE, this Court finds the accused GUILTY of ten counts of violation of BP 22 and hereby sentences her to a penalty of one year imprisonment for each count, or a total of ten years, to be served in accordance with the limitation prescribed in par. 4, Article 70 of the Revised Penal Code and to indemnify complainant the amount of the checks in their totality, or in the amount of P500,000.00.

SO ORDERED.^[8]

Petitioner appealed to the Court of Appeals alleging that: the RTC has no jurisdiction over the offense charged in the ten informations; it overlooked the fact that no notice of dishonor had been given to the appellant as drawer of the dishonored checks; it failed to consider that the reason of "closed account" for the dishonor of the ten checks in these cases is not the statutory cause to warrant prosecution, much more a conviction, under B.P. Blg. 22; it failed to consider that there is only one act which caused the offense, if any, and not ten separate cases; and it disregarded the definition of what a 'check' is under Sec. 185 of the Negotiable Instruments Law.^[9]

Finding the appeal to be without merit, the Court of Appeals affirmed the decision of the trial court with costs against appellant.

Hence, herein petition raising the following errors:

I

THAT THE COURT OF APPEALS ERRED IN NOT RESOLVING THE JURISDICTIONAL ISSUE IN FAVOR OF THE ACCUSED-APPELLANT BY UNJUSTLY DEPRIVING HER OF THE LEGAL BENEFITS OF GIVING RETROACTIVE EFFECT TO THE PROVISIONS OF R.A. NO. 7691 EXPANDING THE JURISDICTION OF THE INFERIOR COURTS TO COVER THE OFFENSES INVOLVED IN THESE CASES PURSUANT TO ART. 22 OF THE REVISED PENAL CODE, THUS IN EFFECT RENDERING THE JUDGMENT OF CONVICTION PROMULGATED BY THE TRIAL COURT BELOW AND AFFIRMED BY THE COURT OF APPEALS PATENTLY NULL AND

VOID FOR HAVING BEEN RENDERED WITHOUT OR IN EXCESS OF JURISDICTION.

II

THAT THE COURT OF APPEALS ERRED IN NOT RESOLVING IN FAVOR OF ACCUSED-APPELLANT THE FACT THAT NO NOTICE OF DISHONOR HAD BEEN GIVEN HER AS DRAWER OF THE DISHONORED "CHECKS" PURSUANT TO THE REQUIREMENT EXPRESSLY PROVIDED UNDER BATAS PAMBANSA BILANG 22.

III

THAT THE COURT OF APPEALS ERRED IN CONSTRUING THE PROVISIONS OF BATAS PAMBANSA BILANG 22 CONTRARY TO THE WELL-ESTABLISHED RULE OF STATUTORY CONSTRUCTION THAT "PENAL STATUTES, SUBSTANTIVE AND REMEDIAL OR PROCEDURAL, ARE, BY THE CONSECRATED RULE, CONSTRUED STRICTLY AGAINST THE STATE, OR LIBERALLY IN FAVOR OF THE ACCUSED" AND THAT "IT IS ALWAYS THE DUTY OF THE COURT TO RESOLVE THE CIRCUMSTANCES OF EVIDENCE UPON A THEORY OF INNOCENCE RATHER THAN UPON A THEORY OF GUILT WHERE IT IS POSSIBLE TO DO SO", AND IN SO DOING THE DECISION APPEALED FROM INDULGED ITSELF IN "JUDICIAL LEGISLATION" TO FAVOR THE PROSECUTION AND TO WORK GRAVE INJUSTICE TO THE ACCUSED.

Simply worded, the issues of this case may be stated as follows: (1) whether or not the appellate court erred in not granting retroactive effect to Republic Act No. 7691^[10] in view of Art. 22 of the Revised Penal Code (RPC); (2) whether or not notice of dishonor is dispensable in this case; and (3) whether or not the appellate court erred in construing B.P. Blg. 22.

We will resolve the first and third issues before considering the second issue.

First issue — Whether or not the Court of Appeals erred in not giving retroactive effect to R.A. 7690 in view of Article 22 of the RPC.

Petitioner argues that: the failure of the appellate court to give retroactive application to R.A. 7691 is a violation of Art. 22 of the Revised Penal Code which provides that penal laws shall have retroactive effect insofar as they favor the person guilty of the felony; R.A. 7691 is a penal law in the sense that it affects the jurisdiction of the court to take cognizance of criminal cases; taken separately, the offense covered by each of the ten Informations in this case falls within the exclusive original jurisdiction of the Municipal Trial Court under Sec. 2 of R.A. 7691; and the Court of Appeals is guilty of judicial legislation in stating that after the arraignment of petitioner, said cases could no longer be transferred to the MTC without violating the rules on double jeopardy, because that is not so provided in R.A. 7691.^[11]

The Solicitor General, in its Comment, counters that the arguments of petitioner are baseless contending that: penal laws are those which define crimes and provides for their punishment; laws defining the jurisdiction of courts are substantive in

nature and not procedural for they do not refer to the manner of trying cases but to the authority of the courts to hear and decide certain and definite cases in the various instances of which they are susceptible; R.A. No. 7691 is a substantive law and not a penal law as nowhere in its provisions does it define a crime neither does it provide a penalty of any kind; the purpose of enacting R.A. No. 7691 is laid down in the opening sentence thereof as "An Act Expanding the Jurisdiction of the Municipal Trial Courts, Municipal Circuit Trial Courts and the Metropolitan Trial Court" whereby it reapportions the jurisdiction of said courts to cover certain civil and criminal case, erstwhile tried exclusively by the Regional Trial Courts; consequently, Art. 22 of the RPC finds no application to the case at bar; jurisdiction is determined by the law in force at the time of the filing of the complaint, and once acquired, jurisdiction is not affected by subsequent legislative enactments placing jurisdiction in another tribunal; in this case, the RTC was vested with jurisdiction to try petitioner's cases when the same were filed in October 1992; at that time, R.A. No. 7691 was not yet effective;^[12] in so far as the retroactive effect of R.A. No. 7691 is concerned, that same is limited only to pending civil cases that have not reached pre-trial stage as provided for in Section 7 thereof and as clarified by this Court in *People vs. Yolanda Velasco*^[13], where it was held: "[a] perusal of R.A. No. 7691 will show that its retroactive provisions apply only to civil cases that have not yet reached the pre-trial stage. Neither from an express proviso nor by implication can it be understood as having retroactive application to criminal cases pending or decided by the RTC prior to its effectivity."^[14]

On this point, the Court fully agrees with the Solicitor General and holds that Article 22 of the Revised Penal Code finds no application to the case at bar.

Said provision reads:

ART. 22. *Retroactive effect of penal laws.* — Penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving sentence.

A penal law, as defined by this Court, is an act of the legislature that prohibits certain acts and establishes penalties for its violations. It also defines crime, treats of its nature and provides for its punishment.^[15] R.A. No. 7691 does not prohibit certain acts or provides penalties for its violation; neither does it treat of the nature of crimes and its punishment. Consequently, R.A. No. 7691 is not a penal law, and therefore, Art. 22 of the RPC does not apply in the present case.

B. P. Blg. 22, which took effect on April 24, 1979, provides the penalty of imprisonment of not less than thirty days but not more than one year or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed P200,000.00, or both such fine and imprisonment at the discretion of the court.

R.A. No. 7691 which took effect on June 15, 1994, amended B.P. Blg. 129, and vested on the Metropolitan, Municipal and Municipal Circuit Trial Courts jurisdiction to try cases punishable by imprisonment of not more than six (6) years.^[16] Since R.A. No. 7691 vests jurisdiction on courts, it is apparent that said law is *substantive*.

[17]

In the case of *Cang vs. Court of Appeals*,^[18] this Court held that "jurisdiction being a matter of substantive law, the established rule is that the statute in force at the time of the commencement of the action determines the jurisdiction of the court."

^[19] R.A. No. 7691 was not yet in force at the time of the commencement of the cases in the trial court. It took effect only during the pendency of the appeal before the Court of Appeals.^[20] There is therefore no merit in the claim of petitioner that R.A. No. 7691 should be retroactively applied to this case and the same be remanded to the MTC. The Court has held that a "law vesting additional jurisdiction in the court cannot be given retroactive effect."^[21]

Third issue — Whether or not the Court of Appeals erroneously construed B.P. Blg. 22.

Petitioner insists that: penal statutes must be strictly construed and where there is any reasonable doubt, it must always be resolved in favor of the accused;^[22] the Court of Appeals, in construing that B.P. Blg. 22 embraces cases of "no funds" or "closed accounts" when the express language of B.P. Blg. 22 penalizes only the issuance of checks that are subsequently dishonored by the drawee bank for "insufficiency" of funds or credit, has enlarged by implication the meaning of the statute which amounts to judicial legislation;^[23] a postdated check, not being drawn payable on demand, is technically not a special kind of a bill of exchange, called check, but an ordinary bill of exchange payable at a fixed date, which is the date indicated on the face of the postdated check, hence, the instrument is still valid and the obligation covered thereby, but only civilly and not criminally;^[24] the trial court also erroneously cited a portion in the case of *Lozano vs. Martinez*^[25] that the "language of B.P. Blg. 22 is broad enough to cover all kinds of checks, whether present dated or postdated, or whether issued in payment of pre-existing obligations or given in mutual or simultaneous exchange for something of value," since the same is mere *obiter dictum*;^[26] in the interpretation of the meaning of a "check", where the law is clear and unambiguous, the law must be taken as it is, devoid of judicial addition or subtraction.^[27]

The Solicitor General counters that a postdated check is still a check and its being a postdated instrument does not necessarily make it a bill of exchange "payable at a fixed or determinable future time" since it is still paid on demand on the date indicated therein or thereafter just like an ordinary check.^[28] It also points out that the doctrine laid down in *Lozano vs. Martinez* was reiterated in *People vs. Nitafan*,^[29] hence, it can no longer be argued that the statement in the case of *Lozano* regarding the scope of "checks" is mere *obiter dictum*.

Again, we agree with the Solicitor General and find petitioner's claim to be without merit.

The rationale behind B.P. Blg. 22 was initially explained by the Court in the landmark case of *Lozano vs. Martinez*^[30] where we held that: